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Judicial Department*

*Court Interpretation  
Guides for Policy and Practice  
In the State Courts*

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**COURT INTERPRETATION**  
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### **Court Interpreter Task Force Committee Members:**

James G. Benway, Committee Chair, Director of Human Resources & Training, Office of the State Court Administrator, Denver, Colorado

Robert L. Bernard, Judicial District Administrator, Twentieth Judicial District, Boulder, Colorado

Mindy Masias, Human Resources Analyst, Office of the State Court Administrator, Denver, Colorado

Sean Stromberg, Court Interpreter Coordinator, Twentieth Judicial District, Boulder, Colorado

Cathy Bahr, Certified Federal Interpreter, Denver, Colorado

Mary Bohlender, Judicial District Administrator, Nineteenth Judicial District, Greeley, Colorado

Miguel Buch, Court Interpreter, Twentieth Judicial District, Boulder, Colorado

Maria Freiberg, Certified Federal Interpreter, The Language Center, Denver, Colorado

Isabelle Houlbreque, Denver County Court, Court Interpreter's Office, Denver, Colorado

Gracielle Massonnat-Mick, Interpreter, Specifically Spanish\*, Evergreen, Colorado

Colleen Ruiz, Spanish Interpreter, Justice Information Center, Denver, Colorado

Laurie Shera, District Administrator, Seventeenth Judicial District, Brighton, Colorado

\*Specifically Spanish is company name.

## Court Interpretation: The Requirements

Court interpretation for non-English speaking and deaf or hearing-impaired individuals is a highly specialized form of interpreting that cannot be effectively performed without commensurate specialized training and skills. Arguably, it is the most difficult form of interpreting. Being bilingual, even fluently so, is an insufficient qualification to be a court interpreter. Court interpreters must be able to preserve “legal equivalence” while interpreting. Moreover, they must be able to do this in each of three modalities: simultaneous interpreting, consecutive interpreting, or sight translating documents.

Interpreters must be able to translate with exactitude... while accurately reflecting a speaker’s nuances and level of formality... The interpretation cannot be summary or convey only the gist of the original source message.

Dr. Roseann Gonzalez, Director of the Federal Court Interpreter Certification Project, and her colleagues write that to maintain legal equivalence, the interpreter must:

...interpret the original source material without editing, summarizing, deleting, or adding while conserving the language level, style, tone, and intent of the speaker; or to render what may be termed the **legal equivalence** of the source message.

Legal equivalence also entails “conservation” of speech style:

It is important to remember that from the beginning of judicial proceedings, the judge and/or jury have to determine the veracity of a witness’s message based on an impression conveyed through the speaker’s demeanor. The true message is often in **how** something is said rather than **what** is said; therefore, the style of a message is as important as its content.

The interpreter is required to render in a verbatim manner the form and content of the linguistic and paralinguistic elements of a discourse, including all of the pauses, hedges, self-corrections, hesitations, and emotion as they are conveyed through tone of voice, word choice, and intonation; this concept is called conservation.

If interpretation is improper, defendants may misunderstand what is taking place; the evidence heard by judge and jury may be distorted, if not significantly changed. When poor interpretation occurs, the English-speaking members of the court and the non-English speaking litigants or witnesses virtually ***do not attend the same trial.***

[When non-English speakers] tell their stories, it is more likely than not that significant portions of their testimony will be distorted by the interpreter omitting information present in the original testimony, adding information not present, or by stylistically altering the tone and intent of the speaker.

Judges and juries are not given the opportunity to “hear” the testimony as it was originally spoken, and defendants and witnesses cannot fully comprehend the questions asked of them. This linguistic distortion compromises the fact-finding process.

Writing in *The Bilingual Courtroom: Court Interpreters in the Judicial Process*, Dr. Susan Berk-Seligson also describes the ways in which the interpreter may distort evidence:

...an interpreter has the power to make a witness's testimony cast more (or less) blame than it did in the source language... and, alternatively, he/she can remove from the testimony any blame-laying strategies it may have contained. Moreover, an interpreter can make an attorney look more polite and less aggressive to a witness and a witness more, or alternatively less cooperative to an attorney. Finally, interpreters often introduce an element of coercion into the examination process when they interpret for witnesses and defendants.

In addition to highly specialized and demanding interpretation skills, court interpreters must adhere to strict codes of appropriate behavior and at times face unusual problems of law and ethics. For example, interpreters are often asked for legal or behavioral advice, which they must decline to give; they may overhear private conversations between foreign language speaking defendants that contain evidence; defendants may even "confess" to an interpreter during private moments.

## Interpreting Terminology

### Interpretation

Interpretation means the unrehearsed transmitting of a *spoken* or signed message from one language to another. Interpretation is distinguished from "translation", which relates to written language (see below). Qualified interpreters, use two modes of interpreting in court—"simultaneous" and "consecutive". A third common mode is "summary" interpreting, which should not be used in court settings. These terms are also defined below.

### Consecutive Interpreting

Consecutive interpreting is rendering statements made in a source language into statements in the target language intermittently after a pause between each completed statement in the source language. In other words, the interpreter renders an interpretation after the speaker has stopped speaking.

When using this mode of interpreting, it may be necessary for the interpreter to signal a speaker to pause to permit a consecutive interpretation when the length of the utterance approaches the outer limits of the interpreter's capacity for recall. During consecutive interpreting, the interpreter should take notes to assist him/her in rendering the interpretation.

### Simultaneous Interpreting

Simultaneous interpreting is rendering an interpretation continuously at the same time someone is speaking. Simultaneous interpreting is intended to be heard only by the person receiving the interpretation and is usually accomplished by speaking in whispered

tones or using equipment specially designed for the purpose in order to be as unobtrusive as possible.

### Sight Interpreting

Sight interpreting is more commonly referred to as “sight translation”. (See below).

### Translation

Translation is converting a written text from one language into written text in another language. The source of the message being converted is always a written language.

### Sight Translation

Sight translation is a hybrid type of interpreting/translating whereby the interpreter reads a document written in one language while translating it orally into another language. It is sometimes called sight interpreting. In this mode of interpreting, a written text must be rendered orally without advance notice and on sight.

### Proceedings Interpreting

Proceedings interpretation is for a non-English speaking litigant in order to make the litigant “present” and able to participate effectively during the proceedings. This interpreting function is ordinarily performed in the simultaneous mode. The interpreter’s speech is always in the foreign language, and is not part of the record of proceedings.

### Witness Interpreting

Witness interpretation is interpretation during witness testimony for presenting evidence to the court. This interpreting function is performed in the consecutive mode; the English language portions of the interpretation are part of the record of the proceeding. A variant of “witness” interpreting is assistance provided by the interpreter during communications between the judge and other English-speaking official on the case and a non-English speaking defendant or civil litigant. Typical examples are those communications that occur during arraignments, plea, or sentencing hearings.

### Interview Interpreting

Interview interpreting is interpreting to facilitate communication in interview or consultation settings. Interview interpreting may occur in conjunction with court proceedings or before or after court proceedings. Foremost among these are interview or consultations that take place between attorney and client (sometimes referred to as “defense” interpreting) and between a non-English speaking person and bail screening or probation personnel.

Interview interpreting may be performed in either or both the simultaneous and consecutive modes during an interview, depending on the circumstances.

### **When Should an Interpreter be appointed?**

Many individuals have enough proficiency in a second language to communicate at a very basic level. However, participation in court proceedings requires far more than a very basic level of communicative capability. Consider that in order for non-English speaking criminal defendants to testify in their own defense, they must be able to:

- accurately and completely describe persons, places, situations, events,
- tell “what happened” over time,
- request clarifications when questions
- are vague or misleading, and
- during cross-examination;
- recognize attempts to discredit their testimony,
- refuse to confirm contradictory interpretations of facts, and
- defend their position.

Moreover, for defendants to evaluate and respond to adverse testimony of witnesses, and assist in their defense, they must comprehend the details and the subtle nuances of both questions and answers spoken in English during the testimony of adverse witnesses, and, at appropriate times, secure the attention of counsel and draw attention to relevant details of testimony.

In non-evidentiary proceedings that involve determination of custodial status, advisement of rights, consideration of sentences, and articulation of obligations and responsibilities established in orders of the court, non-English speaking persons must receive the same consideration as native speakers of English.

*It is recommended that judges presume a bona fide need for an interpreter when a representation is made by an attorney or by a pro se litigant that a party or witness has limited proficiency in English and requests an interpreter.*

### **Assessing the Need for an Interpreter**

When a party does not request an interpreter but appears to have a limited ability to communicate in English, the court should conduct a brief voir dire to determine the extent of the “limitation”, to be consistent with previous language. Such a voir dire should avoid questions that can be appropriately answered with “yes” or “no”. The voir dire should include “wh- questions” (what, where, who, when) and questions that call for describing people, places or events or a narration (tell what happened). A model for such a voir dire is illustrated in [Figure 6.1](#).



*When any doubt exists about the ability of persons to comprehend proceedings fully or adequately express them in English, interpreters should be appointed.*

### Waiver of Interpreter

Great caution should be exercised before permitting waiver of a right to an interpreter. The judge should not allow a person who has limited proficiency in English to waive the use of an interpreter unless the person requests a waiver in writing *and* in the person's native language.

- Deliberations made on matters of waiver or retracting of waiver should be on the record.
- At any stage of the case or proceeding, a person who has waived an interpreter should be allowed to retract a waiver and receive the services of a proceeding's interpreter for the remainder of the case or proceeding.

**CAUTION:** Acquiring interpreters through private interpreter agencies should not be relied upon by court management personnel as presumptive evidence of an interpreter's qualifications for court interpreting.

### Use of Qualified Interpreters

All interpreters appointed by the court should be as highly qualified as possible. It is inefficient for trial judges to be responsible for an *ad hoc* determination of interpreter qualifications in the courtroom, and the results of in-court voir dire (described below) remain problematic in the best of circumstances. Trial judges should urge that a coordinator of interpreter services be designated whose responsibilities include meaningful screening and assessment of interpreters' skills before placing their names on a roster of court interpreters who may be called to interpret on a regular basis in the court.

Circumstances frequently arise, however, when a judge is asked to accept the services of an individual whose language skills have not been previously evaluated.

**CAUTION:** The term "certified" is often used by interpreters or private interpreting agencies when the interpreter has received only a rudimentary orientation to the profession. Judges and court managers should not assume that interpreters who claim to be "certified" have *demonstrated* their competence in language or interpreting skills through formal testing or any other effective means of establishing functional proficiency.

When the court is obliged to use an interpreter whose skills are untested, it is recommended that the judge establish on the record that the proposed interpreter:

- ☑ communicates effectively with the officers of the court and the person(s) who receive(s) the interpreting services;
- ☑ knows and understands the Code of Professional Responsibility for Interpreters adopted by the State of Colorado Judicial Department;
- ☑ will comply with the Code of Professional Responsibility, noting on the record any of its provisions that cannot be honored; and
  
- ☑ takes the same oath that all interpreters must take in a court proceeding.

[Figure 6.2](#) illustrates a basic format for an in court voir dire that judges may use to make these determinations, before allowing the interpreter to assist the court. Judges may also wish to establish a policy of securing written affidavits from interpreters before conducting the voir dire. The affidavit should be substantially similar in content to the suggested voir dire. If an affidavit is used, it is recommended that it is briefly reviewed on the record and its truthfulness attested to by the interpreter.

**CAUTION:** While an in-court voir dire is useful to identify interpreters who are obviously unqualified, such techniques do not establish whether the interpreter actually possesses the desired level of functional proficiency.

### **Interpreter's Oath**

Every interpreter used in the court should be required to swear an “oath of true interpretation”. Some form of an oath, in fact, is required in the statutes of most states. A recommended model oath is presented in [Figure 6.3](#).

### **Interpreters Who Are Court Employees**

For the sake of expediency, interpreters who are full or part-time employees of the court are often sworn-in with an oath that binds them throughout their employment by the judiciary. The oath is not administered again for each proceeding. Many courts, however, rely primarily on an independent contract or per diem interpreters who are used regularly but who are not court employees. When this is the case, these courts also may find it expedient to administer an oath that is kept on file, and thereafter to establish on the record for each proceeding that the oath is on file.

In the case of trials, however, experienced judges recommend that the oath always be administered orally to interpreters in the presence of the jury to reinforce the jury's awareness of the role of the interpreter.

## Interpreters Who Are Not Court Employees

For interpreters who are not employees of the court and who are used intermittently or rarely, it is recommended that the interpreter be sworn-in at the beginning of the proceeding (in which instance the oath extends for the duration of that case) or at the beginning of a day's work in a given courtroom (in which case the oath extends for the duration of the day's services in that courtroom).

## General Clarification of Interpreter's Role

The judge should explain the role and responsibilities of interpreters to all the courtroom participants in any court proceeding. The explanation should be given before the proceedings begin. For example, the judge may include these remarks at the beginning of a session of court, or at the beginning of each separate proceeding if all or most of the participants change between proceedings. The clarification should include the following points:

- The interpreter's only function is to help the court, the principal parties in interest, and attorneys communicate effectively with one another;
- The interpreter may not give legal advice, answer questions about the case, or help anyone in any other way except to facilitate communication;
- If a person who is using the services of the interpreter has questions, those questions should be directed to the court or an attorney through the interpreter; the interpreter is not permitted to answer questions, only to interpret them;
- If someone cannot communicate effectively with or understand the interpreter, that person should tell the court or presiding officer.

[Figure 6.4](#) provides suggested text for this advisement.

## Special Clarification of Interpreter's Role to Sworn Witnesses

The judge should advise every witness of the role of the interpreter immediately after the witness is sworn and before questioning begins. As the judge gives the advisement, the interpreter simultaneously interprets it for the witness. The clarification should cover the following points:

- Everything the witness says will be interpreted faithfully;
- The witness must speak to the person who asks the question, not to the interpreter. If the witness needs a question to be clarified, the witness must ask for clarification from the person who asked the question;

- ☑ The witness should respond only after having heard the entire question interpreted into his or her own language;
- ☑ The witness should speak clearly and loudly so everyone in the court can hear; and
- ☑ If the witness cannot communicate effectively with the interpreter, she or he should tell the court or presiding officer.

[Figure 6.5](#) provides suggested text for this advisement.

#### Clarification of the Role of the Interpreter to Jurors

Any time an interpreter is required for a jury trial, the judge should advise the jurors of (1) the role and responsibilities of interpreters and (2) the nature of evidence taken through an interpreter. Several specific and different advisements may be called for at different stages of the proceeding.

#### Impaneling a Jury

When a case involves a non-English speaking party, the judge should instruct the panel of jurors before voir dire begins that an interpreter is sitting at counsel table to enable the party to understand the proceedings. It is also important to determine whether prospective jurors are affected by the presence of an interpreter: do they hold prejudices against people who don't speak English? Do they speak a foreign language that will be used during the proceeding? If so, will they be able to pay attention only to the interpretation?

#### Before the Trial Begins

After a jury is impaneled and before a trial begins, the judge should instruct jurors as part of the pretrial instructions that they may not give any weight to the fact that a principal party in interest has limited or no proficiency in English and is receiving the assistance of an interpreter.

[Figure 6.6A](#) provides suggested text for this advisement.

#### When a Trial Involves Witness Interpreting

When the trial involves witness interpreting, the judge should give instructions to jurors before the witness interpreting begins that include the following points:

- ☑ Jurors must treat the interpretation of a witness's testimony as if the witness had spoken English and as if no interpreter were present;

- ☑ Jurors must not evaluate a witness’s credibility positively or negatively due to the fact that his or her testimony is being given through an interpreter,
- ☑ Jurors who speak a witness’s language must ignore what is said in that language and treat as evidence only what the interpreter renders in English. Such jurors must ignore all interpreting errors they think an interpreter may have made.

There are several reasons for this last instruction, which may seem preposterous to some jurors, and judges may wish to elaborate by explaining them. All of those reasons underscore the need for professional interpreters. First, the record of the proceedings is only in English, and it is the recorded testimony that constitutes evidence in the case. Second, jurors may mishear what is said; the interpreter (like the court reporter!) is a trained listener. Finally, ordinary individuals and even trained interpreters may disagree about the correct interpretation of an expression, even if they hear the same words. Once again, interpreters are the court’s experts in language, and their interpretation must be presumed reliable.

**Figure 6.6B** provides suggested text for this advisement.

#### **Maximizing Communication During Interpreted Proceedings**

As in any proceeding, the judge should keep the room in which the session is held as quiet as possible and allow only one person to speak at a time. These normal rules are especially important in interpreted proceedings. Interpreters should never use the pronoun “I” to refer to themselves when speaking. The reason for this is to avoid any possibility of confusion during the proceeding and in the record between interpreted utterances and statements that the interpreter may need to make to the court during the proceeding. For example, the interpreter should say, “Your honor, the interpreter was unable to hear the question and respectfully requests that it be restated”, rather than “Your honor, I was unable to hear the question”. The latter could be confused in the record with statement by the witness. Therefore, the judge should always:

- ☑ Remind the interpreter and court participants that the interpreter, when addressing the court on her or his own initiative, should always speak in the third person and identify her or himself as “the interpreter” or “this interpreter”.

Other procedures the judge should observe during interpreted proceedings include the following:

- ☑ Speak and assure that others speak at a volume and rate that can be accommodated by the interpreter.

- ☑ Permit witness interpreters to use appropriate signals to regulate speakers when the length of an utterance approaches the outer limit of the interpreters' capacity for recall.
- ☑ Make certain that the interpreter can easily hear and see the proceedings.
- ☑ The judge should ensure that the interpreter has conversed briefly with the non-English speaking person to be certain that the interpreter and the party or witness is able to communicate adequately.

**CAUTION:** When setting the pace of speech during interpreted proceedings, do not assume that the interpreter can work at the same speed as the court reporter. The court reporter works in shorthand and does not need to transfer meaning from one language to another.

#### Interpreter's Responsibility

With the knowledge and consent of the attorneys, the interpreter should briefly interview the non-English speaking person before the proceeding begins to become familiar with his or her speech patterns and linguistic traits, and any other traits (e.g., mental retardation, speech impairments) that may bear upon assisting the party.

Interpreters should advise the court or presiding officer any time during a proceeding or case whenever they believe they are or may be in violation of any part of the Code of Professional Responsibility or if they discover that they cannot communicate effectively with the non-English speaking person.

#### Attorney's Responsibility

The attorneys should advise the interpreter, as far in advance of the proceedings as possible, of any special concerns they may have related to the particulars of the case, any peculiar linguistic characteristics, or other traits their non-English speaking client may present. Attorneys should give interpreters access to documents or other information pertaining to the case.

#### Record of Interpreted Testimony

The record of the case made by a court reporter in interpreted proceedings consists only of the English language spoken in court. (Obviously a court reporter can not preserve any of the non-English language for review.) If questions arise during the trial regarding the faithfulness of the interpretation, the quality of interpretation in most instances cannot be evaluated after the fact by the trial judge, or later on appeal. Because of this, an audio or

audio/video record to supplement the court reporter's transcript is desirable. Making a tape recording is recommended if there is interpreted witness testimony, since errors on the part of the interpreter alter the evidence presented to the judge and jury.

#### Audio-taping Interpreted Testimony

#### Is Recommended

Judges who regularly hear interpreted matters should explore the feasibility of making tape recordings of all witness interpreting and, as a second priority, of "proceedings interpreting". ("Proceedings interpreting" in the simultaneous mode is done quietly at counsel table or with interpreting equipment and would require special arrangements for recording.) In most courtrooms for the foreseeable future, this may not be feasible. In the alternative, however, it is strongly recommended that an audio or audio/video record be made in the following circumstances:

- ☑ In all capital cases, regardless of the qualifications of the interpreters, a record should be made of all sworn witness testimony and its interpretation;
- ☑ In proceedings involving interpretation by a non-certified interpreter, especially those in which the non-English speaking person is at risk of incarceration, a record should be made of all sworn witness testimony and its interpretation;
- ☑ In felony proceedings involving entry of a guilty plea that are interpreted by an unqualified interpreter, a permanent record should be made of the proceedings interpretation and statements made to the court by the non-English speaking person.
- ☑ When testimony is verbal, the record may be made with audio recording only; when the testimony is conveyed in a sign language, the testimony and the interpretation of questions posed to the witness require videotape.

#### Errors During Witness Interpreting

Interpreting is an extraordinarily demanding activity and cannot be error-free. Appreciation of this reality should be extended to the interpreter during any allegations of inaccurate interpretation. Moreover, professional interpreters are trained to understand and act on their obligation to correct any errors that they might make during a proceeding. The court should allow the following precautions to be taken.

#### Error by Witness Interpreter

When a witness interpreter discovers his or her own error, the interpreter should correct the error at once, first identifying him/herself in the third person for the record (e.g., "Your honor, the interpreter requests permission to correct an error"). If the interpreter becomes aware of an error *after* the testimony has been completed, he or she should request a bench or side bar conference with the court and the lawyers to explain the problem. The court can then decide whether a correction on the record is required.

## Discovery of Error by Others

When an error is suspected by the judge, an attorney, or another officer of the court besides the interpreter, that person should bring the matter to the attention of the judge at the earliest convenient opportunity. If testimony is still being taken, the problem should be raised before the witness is released. In the case of a jury trial, the problem and its resolution should be handled at a side bar conference. The following steps are recommended for the trial judge:

- ☑ The judge should determine first whether the issue surrounding the allegedly inaccurate interpretation is substantial or potentially prejudicial and requires determination.
- ☑ If the judge agrees that the error is substantial or could be prejudicial, then the judge should refer the matter first to the interpreter for reconsideration. If this does not resolve the problem, evidence from other expert interpreters or any other linguistic expert that the judge may select, should be sought. In extreme circumstances, it may be appropriate to permit attorneys from both sides to submit an expert.
- ☑ The judge should make a final determination as to the correct interpretation. If the determination is different from the original interpretation, then the court should amend the record accordingly and advise the jury.

## Modes of Interpreting

The mode of interpreting to be used at any given time (consecutive or simultaneous) depends on the various types of communication to be interpreted within a proceeding and not on the type of proceeding. In fact, both the simultaneous and consecutive modes will often be appropriate within a proceeding. For example, interpreting should be simultaneous when a judge is making a defendant aware of his or her rights and consecutive when the judge begins to question the defendant. The following guidelines for modes of interpreting are suggested.

**CAUTION:** If an interpreter referred to the court is unable to interpret competently in either the consecutive or simultaneous modes, the interpreter is not qualified for court interpreting.

## Simultaneous Mode



The simultaneous mode of interpreting should be used for a person who is listening only. This is the normal mode for proceedings interpreting. Accordingly, an interpreter should interpret in the simultaneous mode in situations such as the following:

- ☑ for a defendant when testimony is being given by another witness,
- ☑ for a defendant or witness when the judge is in dialog with an officer of the court or any person other than the defendant or witness,
- ☑ for a defendant when the court is addressing the jury or gallery or any other person present in the courtroom, or
- ☑ for any non-English speaking party when the judge is speaking directly to the person without interruption or regular call for responses (e.g., lengthy advisements of rights; judge's remarks to a defendant at sentencing).

#### Consecutive Mode

The consecutive mode of interpreting should be used when a non-English speaking person is giving testimony or when the judge or an officer of the court is communicating directly with such a person and is expecting a response (e.g., taking a plea). This should be the normal mode for witness interpreting.

#### The Summary Mode

The summary mode of interpretation should *not* be used. Only unqualified interpreters who are unable to keep up in the consecutive or simultaneous modes most often resort to this type of interpreting.

#### **Multiple non-English Speaking Defendants In the Same Trial**

When two or more defendants who need an interpreter speak the same language, interpreting equipment should be used to provide simultaneous interpretation of the proceedings. This equipment permits a single interpreter to convey interpretation to several parties through the use of headsets with earphones and small mouthpiece microphones. This technique obviates the need to have more than one proceedings interpreter working at the same time for multiple defendants in criminal cases, or the undesirable technique of relying on physical proximity of the interpreter for multiple defendants.

**NOTE:** It is suggested that judges become familiar with how interpreting equipment works and the advantages it offers in any proceeding where interpreters engage in simul-

taneous interpretation. Use of the equipment allows the interpreter and the court flexibility to maximize communication with minimal disruption.

### **Preventing Interpreter Fatigue**

The United Nations standards for conference interpreting (simultaneous mode interpreting) call for replacing interpreters with co-interpreter every 45 minutes. Conference interpreting is arguably a less demanding activity than is simultaneous court interpreting. If a proceeding's interpreter believes that the quality of interpretation is about to falter due to fatigue, the interpreter should inform the court, and a recess should be taken or a replacement obtained. For any proceeding lasting longer than thirty minutes of continuous simultaneous interpretation, two interpreters should be assigned so they can relieve each other at periodic intervals to prevent fatigue. A similar standard should be observed for continuous witness interpreting.

### **Use of Multiple Interpreters**

There are three basic functions an interpreter serves during court proceedings. In some circumstances, it is physically impossible for one interpreter to fulfill more than one of the functions at the same time.

- ☑ *Proceedings interpreting:* The most frequently encountered function an interpreter performs is to enable a non-English speaking person who is the subject of litigation understand the proceedings and communicate with the court when necessary. In short, “proceedings interpreting” makes the defendant or other litigant effectively *present* during the proceedings. It is conducted in the simultaneous mode.
- ☑ *Witness interpreting:* This function of the interpreter is to secure evidence from non-English speaking witnesses that are preserved for the record. It is sometimes called “record” interpreting, and it is conducted in the consecutive mode.
- ☑ *Interview interpreting:* This function of the interpreter is to facilitate communication between a non-English speaking person and her or his attorney to ensure the effective assistance of counsel, or to perform similar duties in any other interview setting associated with a court proceeding. (When an interpreter is used to assist in attorney-client consultations, the term “*defense*” interpreting is sometimes used.) Interviews may use both simultaneous and consecutive interpreting, depending on the circumstances.

When there is only one non-English speaking defendant and no non-English speaking witnesses, one interpreter is all that is needed. (If the hearing is lengthy, one interpreting team will be required.) If there are non-English speaking defendants and other non-English speaking witnesses, two interpreters will be needed during the witness testimony -- the proceedings interpreter who is interpreting the English questions for the defendant

(and who is able to assist the defendant with attorney-client communication), and the witness interpreter.

When there are multiple non-English speaking defendants, must there be an interpreter for each person? For proceedings interpreting (making the defendants present), there need not be: one interpreter (or interpreting team) using headset equipment can interpret at the same time for all of the defendants.

For defense interpreting, however, at least one additional interpreter needs to be available in multi-defendant cases so that defendants can communicate with counsel when necessary during the trial.

Some courts appoint an interpreter for each defendant so that each defendant's interpreter can provide proceedings interpreting and defense interpreting when necessary. As noted above, this may be an unnecessarily expensive alternative. If the parties agree, two interpreters can trade off providing proceedings interpreting for all of the defendants and the "resting" interpreter can be signaled and used by any defendant to communicate with counsel as necessary.

In cases where a trial involves more than one defendant whose interests are in conflict with each other, counsel and the parties may be uncomfortable using the same interpreter for privileged communications. If this becomes an issue, the court may have no choice but to provide interpreters for each defendant. The practice should not be *presumed* necessary, however, because trained and qualified interpreters are under oath to protect confidentiality of communications and to refrain from communicating directly with any court participant except when they are engaged in interpretation.

#### **Use of Languages Other than English by Judges, Attorneys or Other Participants**

Some judges and attorneys are bilingual and are able to communicate in the language of the non-English speaking person. In these situations it may be tempting for the judge to address the non-English speaking person in her or his language, to act as interpreter, or to allow or require counsel to substitute for a qualified interpreter. It is *strongly recommended* that these practices be avoided, and that courts observe the following guidelines regarding the use of languages other than English during court proceedings:

- Judges should not function as interpreters during proceedings.
- Judges and other court participants should speak in English at all times during proceedings.
- Attorneys should use English during all proceedings at all times, except in confidential communications with a client.

- ☑ Attorneys should not be permitted to function as interpreters for parties they represent.
- ☑ If, contrary to these recommended standards, attorneys or other courtroom participants are permitted to function as interpreters, they should be appointed subject to the same standards related to qualifications for interpreting that are applied to professional interpreters.

Judges who speak the language of a non-English speaking person often (and admirably) wish to make the person feel more at ease in the courtroom through some form of direct communication in the person's native language. A very brief greeting, announced beforehand on the record, might be used in such situations (e.g., "Please note for the record that the court will greet the defendant in the \_\_\_\_\_ language"). Such a greeting might then be followed by informing the person *in English through the interpreter* of the reasons why the judge will refrain from communicating in the shared language.

**What Court Interpreters Would Tell Judges If They Could Speak From Their Hearts**

The Court Interpreting, Legal Translating and Bilingual Services Section of the Administrative Office of the New Jersey Courts made the following document available to the court community and the NCSC in September 1988. It has undergone several revisions since that time. The most recent revisions were contributed by Margot Revera, Court Interpreter, Union County, and New Jersey (Feb. 1993) and by staff of the National Center for State Courts, for use in this publication.

1. Please take some time to become familiar with my profession. I'd like very much for you to understand the professional services I am responsible for rendering. It may be a helpful guide if you would treat me the way you tend to treat your reporter.

Once you understand my job better, here are some things you will no longer do. Please understand that this isn't just me talking. The following examples represent the best thinking of judges, lawyers and court administrators who have pondered the role of the interpreter in great depth. These examples are based on the Code of Professional Responsibility I'm expected to follow.

A. Please don't ask me to explain or restate what you say. I can only put in another language exactly what you say.

B. Please don't allow attorneys appearing before you to ask me to explain or restate what they or you say. When I decline to perform this task for them, please support me and do not expect me to undermine the Code.

C. Please don't let two or more people talk at the same time. There's no way I can interpret everything that's being said!

D. Please don't ask me not to interpret something. I'm professionally and ethically bound to interpret everything that's said.

E. Please understand that there are many situations in which I'm professionally and ethically bound to interpret in the simultaneous mode. If this bothers you, please let me know in advance so I can make arrangements to be as unobtrusive as possible. Sometimes I can use equipment that will not interfere at all with the proceedings.

F. When an attorney or someone else alleges that I have made an error in interpretation, please don't automatically assume that I have made one. Remember that the attorney is in an adversary relationship and I am not. I occasionally do make mistakes and as a professional interpreter, I will be the first person to admit a mistake. But please ask me if I agree with an attorney's allegation before concluding that I have actually made a mistake. As a neutral party and a linguist, I should have more credibility before the court than others in matters of language.

G. Please don't talk to me when you are really talking to a witness or someone else. If you say, "Ask him if..." or "Tell him that...", remember that I am required to say exactly that in the interpretation or to remind you to talk directly to the person. If I do the former, the person with whom you are attempting to communicate will almost certainly be confused. If I do the latter, you may get upset.

2. It takes more words to say in Spanish what you're saying in English, and other languages have their own unique features. Please be sensitive to that by avoiding rapid-fire delivery of what to you is very routine stuff and helping attorneys avoid excessively fast speech. Be patient and understanding if I have to keep reminding you or others to slow down.

3. I need breaks every bit as much as your reporters do, maybe even more. I am often the only person in the courtroom who is talking all of the time. While everyone else only has to understand what is being said, I have to be both understanding it and putting it into another language. This is very demanding work.

Furthermore, if the proceeding I am interpreting involves simultaneous interpreting for more than an hour, two interpreters should be assigned to the case. We should be able to switch off every thirty minutes or so.

4. Understand the human limits of my job. My main interest here is that you comprehend the fact that no person knows all of the words in any one language, much less all of the words of all the dialects of that language or all of the words of any two languages. Sometimes I need to obtain clarification. It is unethical for me to make up an interpretation or guess at an interpretation of something that I do not understand. Instead of viewing such a request as casting doubt upon my professional credentials, consider viewing it in terms of my commitment to accuracy.

5. Many of my colleagues are not professional interpreters and want very much to improve their interpreting skills. They need support for attending courses and professional seminars. Please do everything you can to enable them to attend educational events. You may even be a good source for on-the-job training, so do not hesitate to take them under your wing from time to time.

6. Please make efficient use of my services. I have other commitments to attend to when I finish interpreting for the case before you for which you have summoned me. If you take my case as quickly as possible you will prevent incurring the extra costs of having me wait and inconveniencing the other courts that may be waiting for my services.

### **Suggestions for Further Reading**

*Copies of the following documents are available by special request from the Information Service, National Center for State Courts*

“Proposed Standards for Interpreted Proceedings”, Court Interpreting, Legal Translating and Bilingual Services Section, Administrative Office of the New Jersey Courts (Working Draft, January 1994).

“Using a Interpreter in Court”, Hon. Heather Van Nuys and Ms. Joanne Moore, *Washington State Bar News*, Vol. 41 No. 5, May 1987.

“Standards for Determining the Need for a Court Interpreter”, California Rules of Court, Rule 985, Standards of Judicial Administration, Section 18.

“Interpreted Proceedings: Instructing Participants on Procedure”, California Rules of Court, Rule 985, Standards of Judicial Administration, Section 18.1.

“Lessons in Administering Justice: What Judges Need to Know About the Requirements, Role and Professional Responsibilities of the Court Interpreter”, Hon. Lynne W. Davis, paper in preparation for publication in the *Harvard Latino Law Review*.

“Attorney as Interpreter: A Return to Babble”, Bill Piatt, *New Mexico Law Review*, Winter 1990.

“How Best to Use an Interpreter in Court”, Alexander Rainoff, *California State Bar Journal*, My 1980.

“Suggestions for Working with Court Interpreters: YOU ARE IN CONTROL!”, Hon. Charles M. Grabau, paper presented to Judges of the Eighth Judicial District, New York, training sponsored by the International Institute of Buffalo, October 20, 1994.

### **Figure 6.1**

## **Model Voir Dire for Determining the Need for an Interpreter**

In general: Avoid any questions that can be answered with “yes - no” replies.

### Identification questions:

*“Ms. \_\_\_\_\_, please tell the court your name and address.”*

*“Please also tell us your birthday, how old you are, and where you were born.”*

### Questions using active vocabulary in vernacular English:

*“How did you come to court today?”*

*“What kind of work do you do?”*

*“What was the highest grade you completed in school?”*

*“Please describe for me some of the things (or people) you see in the courtroom.”*

*“Please tell me a little about how comfortable you feel speaking and understanding English.”*

## **Figure 6.2**

### **Information That Should Be Secured to Establish the Qualifications of Interpreters When No Court Testing or Other Prior Screening Standards Exist**

At minimum, court or counsel should ask the following questions of a proposed interpreter:

1. Do you have any particular training or credentials as an interpreter?
  1. What is your native language?
  2. How did you learn English?
  3. How did you learn [the foreign language]?
  4. What was the highest grade you completed in school?
  5. Have you spent any time in the foreign country?
  6. Did you formally study either language in school? Extent?

7. How many times have you interpreted in court?
8. Have you interpreted for this type of hearing or trial before? Extent?
9. Are you familiar with the code of professional responsibility for court interpreters? Please tell me some of the main points (e.g., interpret everything that is said).
10. Are you a potential witness in this case?
11. Do you know or work for any of the parties?
12. Do you have any other potential conflicts of interest?
13. Have you had the opportunity to speak with the non-English speaking person informally? Was there any particular communication concerns?
14. Are you familiar with the dialect or idiomatic peculiarities of the witness?
15. Are you able to interpret simultaneously without leaving out or changing anything that is said?
16. Are you able to interpret consecutively?

**Figure 6.3**  
**Interpreter's Oath**

Do you solemnly swear or affirm that you will interpret accurately, completely and impartially, using your best skill and judgment in accordance with the standards prescribed by law and the Colorado Judicial Branch Code of Professional Responsibility for Court Interpreters, follow all official guidelines established by this court for legal interpreting or translating, and discharge all of the solemn duties and obligations of legal interpretation and translation?

\_\_\_\_\_ Judicial District  
Interpreter's Oath

STATE OF COLORADO     )  
) vs.  
COUNTY OF             )

I, \_\_\_\_\_, do solemnly swear or affirm under penalty of law that I will well and truly translate from the English language into the \_\_\_\_\_ language, and from the \_\_\_\_\_ language into the English language, all statements made,



the oaths that are administered, and all questions and answers in all matters for which I am assigned in the \_\_\_\_\_ Judicial District, to the utmost of my ability.

\_\_\_\_\_  
Signature

Subscribed and affirmed before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 199\_\_.

\_\_\_\_\_  
Name and title of person  
Administering oath

**Figure 6.4**  
**Suggested Text for Judge's Statement in Court to Clarify the Role of the Interpreter**

We are going to have an interpreter assist us through these proceedings, and you should know what [she] can do and what [she] cannot do. Basically, the interpreter is here only to help us communicate during the proceedings. [She] is not a party in this case, has no interest in this case, and will be completely neutral. Accordingly, [she] is not working for either party. The interpreter's sole responsibility is to enable us to communicate with each other.

The interpreter is not an attorney and is prohibited from giving legal advice. [Her] only job is to interpret, so please do not ask the interpreter for legal advice or any other advice or assistance.

Does anyone have any questions about the role or responsibilities of the interpreter?

If any of you do not understand the interpreter, please let me know. If anyone having difficulty understanding the interpreter at this time?

**Figure 6.5**  
**Suggested Text for Clarifying the  
Interpreter's Role to the Witness**

I want you to understand the role of the interpreter. The interpreter is here only to interpret the questions that you are asked and to interpret your answers. The interpreter will say only what we or you say and will not add, omit, or summarize anything.

*The interpreter will say in English everything you say in your language, so do not say anything you do not want everyone to hear.*

*If you do not understand a question that was asked, request clarification from the person who asked it. Do not ask the interpreter.*

*Remember that you are giving testimony to this court, not to the interpreter. Therefore, please speak directly to the attorney or me, not to the interpreter. Do not ask the interpreter for advice.*

*Please speak in a loud, clear voice so that everyone and not just the interpreter can hear.*

*If you do not understand the interpreter, please tell me. If you need the interpreter to repeat something you missed, you may do so, but please make your request to the person speaking, not to the interpreter.*

*Finally, please wait until the entire question has been interpreted in your language before you answer.*

*Do you have any questions about the role of the interpreter? Do you understand the interpreter?\**

\*Note that the interpreter is simultaneously interpreting this advisement while the judge is speaking, and therefore the witness has an opportunity to recognize any problems with communication.

**Figure 6.6**  
**Suggested Text for Clarifying the**  
**Interpreter's Role to the Jury**

6.6A Proceedings Interpreting

This court seeks a fair trial for all regardless of the language they speak and regardless of how well they may or may not speak English. Bias against or for persons who have little or no proficiency in English is not allowed. Therefore, do not allow the fact that the party requires an interpreter to influence you in any way.

6.6B Witness Interpreting

Treat the interpretation of the witness's testimony as if the witness had spoken English and no interpreter was present. Do not allow the fact that testimony is given in a language other than English to affect your view of [her] credibility.

If any of you understand the language of the witness, disregard completely what the witness says in [her] language. Consider as evidence only what the interpreter provides in English. Even if you think an interpreter has made a mistake, you must ignore it completely and make your deliberations on the basis of the official interpretation.

## Endnotes

1. A full discussion of the problems associated with judges speaking directly to litigants in non-English languages is beyond the scope of these guidelines. Briefly, however, direct communications in non-English language between judge and litigants or witnesses cannot be made part of the record and are functionally equivalent to ex parte communications. Judges who serve as interpreters, moreover, become participants in the case themselves, since it is their English interpretation that is evidence in the case.

2. From time to time, attorneys who also possess non-English language proficiencies appear in court expecting to proceed without the benefit of a court interpreter. They reason that because of their language skills, a court interpreter is unnecessary. Judges, eager to save tax resources, frequently welcome this arrangement. Of equal concern, judges routinely appoint “bilingual” attorneys to represent non-English speaking defendants. Moreover, bilingual attorneys, by court order, are sometimes forced to represent clients without the benefit of an interpreter.

The attorney interpreter appointment, however well intentioned by the court or counsel, poses potential problems that are legion and insurmountable. The roles are both ethically and practically incompatible. For example, how can counsel be an effective advocate and yet interpret at the same time? Counsel cannot effectively meet the demands of both roles. Furthermore, interpreting is a highly complex and mentally demanding task. When the additional duty of court interpretation burdens the duty of advocacy, one role or both will suffer.

If the court allows this arrangement or compels it, the court must consider the language competence and qualifications of the attorney on the record. If extensive voir dire is required, it is difficult to eliminate the incompatibilities of the two roles even at the preliminary stages of the case.

Regardless of the language expertise of the attorney, the Courts should reject this arrangement. It immediately places both the court and counsel on the horns of an ethical dilemma with competing allegiances and incongruent role expectations. It is important to emphasize that either stipulation of counsel or waiver of the client does not avoid this conflict.

For more detailed discussion of these issues see Honorable Lynn W. Davis, “Lessons in Administering Justice - What Judges Need to Know about the Requirements Role and Professional Responsibilities of the Court Interpreter”, paper in preparation for the *Harvard Latino Law Review*, 1995.

See also Bill Piatt, “Attorney as Interpreter”, *new Mexico Law Review*, winter, 1990.